

Before the  
**Federal Communications Commission**  
Washington, DC

In the Matter of:

<b>Alliance for Community Media</b>	)	
<b>Petition for Waiver of Registration</b>	)	
<b>and Certification Requirement of</b>	)	CG Docket No. 05-231
<b>Closed Captioning Rules</b>	)	

**Comments of**

**Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)**  
**National Association of the Deaf (NAD)**  
**Hearing Loss Association of America (HLAA)**  
**Association of Late-Deafened Adults (ALDA)**  
**Cerebral Palsy and Deaf Organization (CPADO)**  
**California Coalition of Agencies Serving the**  
**Deaf and Hard of Hearing (CCASDHH)**  
**National Association of State Agencies of the**  
**Deaf and Hard of Hearing (NASADHH)**  
**Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)**  
**Rehabilitation Engineering Research Center on Technology for the Deaf and Hard**  
**of Hearing, Gallaudet University (DHH-RERC)**

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Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), the National Association of State Agencies of the Deaf and Hard of Hearing (NASADHH), and the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), collectively, “Consumer Groups,” and the Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC), respectfully comment in conditional support, with a corresponding request for modification and/or clarification, of the Aug. 26, 2016 petition for waiver of the Alliance for Community Media (ACM) (ACM Petition).<sup>1</sup> The petition primarily reiterates the points raised in ACM’s March 28, 2016 letter to the Commission (ACM Letter),<sup>2</sup> to which Blake Reid, Counsel to TDI, responded in a letter on April 4, 2016 that we incorporate by reference here (TDI Response).<sup>3</sup>

In general, we acknowledge ACM’s concerns over the burden that would be imposed by requiring video producers who distribute video programming exclusively over exempt public access, educational, and governmental (PEG) channels to comply with the Commission’s certification requirements and agree that the resulting generation of the significant quantity of exemption certifications for such producers would not serve the interests of viewers who are deaf or hard of hearing.<sup>4</sup>

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<sup>1</sup> [https://ecfsapi.fcc.gov/file/10825083956243/ACM\\_Petition%2008.25.2016.pdf](https://ecfsapi.fcc.gov/file/10825083956243/ACM_Petition%2008.25.2016.pdf)

<sup>2</sup> <https://ecfsapi.fcc.gov/file/60001560855.pdf>

<sup>3</sup> <https://ecfsapi.fcc.gov/file/60001568168.pdf> (date erroneously listed as March 4, 2016).

<sup>4</sup> See ACM Petition at 1-2.

However, as the TDI Response noted, not all PEG channels are exempt from the caption provision rules, nor are all programs aired on non-exempt PEG channels.<sup>5</sup> The only specific treatment of PEG channels in the captioning rules is in Rule 79.1(e)(9), which merely places responsibility for captioning public access, governmental, and educational access (PEG) channel programming with “the entity that contracts for its distribution”—— rather than with the channel itself.<sup>6</sup> A public access channel’s programming is only exempt if the channel is exempt under some other provision of the Commission’s rules, such as the \$3 million annual channel revenue exemption.<sup>7</sup>

Thus, we reiterate that the Commission should ensure that any exemption from the certification rules applies only to programming aired on PEG channels that are *actually exempt from the caption provision rules*. **The Commission must avoid incorrectly implying that PEG channels are exempt from the caption provision rules generally.** We also share the concerns of the National Court Reporters Association (NCRA) that an exemption grant could risk unintended consequences for caption quality, and urge the Commission and ACM to account carefully for this possibility in any educational efforts they undertake if an exemption is granted.<sup>8</sup>

Moreover, we reiterate our longstanding objection to the continued maintenance of the \$3 million exemption and others that may encompass some PEG channels.<sup>9</sup> Because the Commission is actively considering narrowing or eliminating those exemptions in response to a petition by the Consumer Groups, **the Commission must make clear that any exemption of VPOs who air programming exclusively on a caption-provision-exempt**

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<sup>5</sup> TDI Response at 1.

<sup>6</sup> See 47 C.F.R. § 79.1(e)(9).

<sup>7</sup> See 47 C.F.R. § 79.1(d)(12).

<sup>8</sup> See *Comments of NCRA* (Feb. 2, 2017), <https://www.fcc.gov/ecfs/filing/10202946022355>.

<sup>9</sup> E.g., *Comments of TDI, et al.*, CG Docket No. 05-231, at 14-18 (July 9, 2014) <http://apps.fcc.gov/ecfs/comment/view?id=6017879330>.

**PEG channel from the certification rules will not preclude or prejudice in any way the narrowing or elimination of the channel's exemption when the Commission acts on the Consumer Groups' petition.** The Commission should take great care not to cause confusion among programmers who may ultimately be subject to closed captioning requirements, or to implicitly endorse the \$3 million exemption or others that ultimately will be narrowed or eliminated.

We note, appreciate, and agree with ACM's acknowledgement of "the usefulness of registration and certification of exemption status for PEG channels."<sup>10</sup> **Accordingly, we urge the Commission to clarify and emphasize that all PEG channels whose programs are all exempt must certify, pursuant to Rule 79.1(m)(2) that all their programs are exempt and specify each category of exemption they claim applies.**<sup>11</sup>

We also urge the Commission to clarify and emphasize (a) that all PEG channels carrying at least some non-exempt programming must certify, pursuant to Rule 79.1(m)(1) and (3) which, if any, of their programs are exempt and which, if any, exemptions they claim apply and (b) that all PEG program *producers* that produce at least some non-exempt programming (or programming aired on non-exempt channels) must certify, pursuant to Rule 79.1(m)(1) and (3), the compliance or exemption and, if applicable, the specific exemption or exemptions claimed, for each program.<sup>12</sup>

Lastly, we acknowledge and appreciate ACM's outreach to the Consumer Groups in advance of the filing window for comments on the Petition and ACM's request for help in identifying ways to improve voluntary captioning efforts for exempt PEG program producers and PEG channels. We stand ready to collaborate with ACM and the Commission

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<sup>10</sup> ACM Petition at 2.

<sup>11</sup> See 47 C.F.R. § 79.1(m)(2).

<sup>12</sup> See 47 C.F.R. § 79.1(m)(3).

on the critical effort to ensure that American who are deaf or hard of hearing can access the important fruits of community media on equal terms.

Respectfully submitted,

/s/

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